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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/706,294	11/03/2000	Jennifer Elizabeth Pozniak	14541.1	6744

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EXAMINER

WEBB, JAMISUE A

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 01/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

NK

Office Action Summary

Application No.

09/706,294

Applicant(s)

POZNIAK ET AL.

Examiner

Jamisia A. Webb

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-21 and 23-30 is/are rejected.
- 7) ☒ Claim(s) 13, 22 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11 . 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-8, 10-12, 14-17, and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Long et al. (5,624,429).

3. With respect to Claim 1, 8, 14 and 17: Long discloses an absorbent article (20) with a front waist region (38), a back waist region (40) and a crotch region located there between (42). Long discloses an absorbent chassis with laterally opposed side edges, and a pair of longitudinally opposed waist edges, forming a waist opening and leg openings, and a pair of opposed side panels located in the front and back waist regions (see Figure 1). Long discloses a first panel having a first side margin (90) that is permanently attached to the side edge in the back waist region, and a second panel that has a second side margin (56) that is releasably attached to the front waist region, using fasteners (60) and the panels being attached to each other, thereby forming a pair of side seams (see Figures 1-4). Long discloses the fasteners are permanently attached to the second side margin (see Figure 1), where the fastener defines a fastener edge (64) which has a length that is shorter than the releasable joint of the second margin (50) (see Figure 3).

4. With respect to Claim 2 and 15: Long discloses an outer cover (22), a body side liner (24) and an absorbent core (26) located there between.

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5. With respect to Claim 3, 6 and 15: Long discloses the fasteners configured to releasably engage the outer cover (See figure 1).
6. With respect to Claim 4: See column 15, lines 41-52.
7. With respect to Claim 5: Long discloses that an attachment panel (78) can be used.
8. With respect to Claim 7 and 16: see column 13, lines 21-27.
9. With respect to Claim 10, 11, 19 and 20: Long discloses fastener ears (64) (see figure 4) that are stretchable in the lateral direction (column 13, lines 21-27).
10. With respect to Claim 12 and 21: The examiner considers the hook and loop type fasteners to be a releasable bond.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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13. Claims 23-26, and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Long et al. (5,624,429).

14. With respect to Claims 23 and 26: Long discloses an absorbent article (20) with a front waist region (38), a back waist region (40) and a crotch region located there between (42). Long discloses an absorbent chassis with laterally opposed side edges, and a pair of longitudinally opposed waist edges, forming a waist opening and leg openings, and a pair of opposed side panels located in the front and back waist regions (see Figure 1). Long discloses each of the panels having a first side margin (90) that is permanently attached to the side edge in the back waist region, and a second side margin (56). Long discloses the fasteners are permanently attached to the second side margin (see Figure 1), where the fastener defines a fastener edge (64) which has a length that is shorter than the releasable joint of the second margin (54) (see Figure 3). Long also discloses the fastener is releasably engaged to an exterior surface of the chassis (column 3, lines 53-56).

15. Long discloses the claimed invention except for the second side margin being permanently bonded to the front waist, and the fasteners releasably engaging the first and second side margins together. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the second side margin be permanently bonded to the front waist, and the fastener releasably engaging the first and second side margins, since it has been held that rearranging parts of an invention involves only routing skill in the art. *In re Japikse*, 86 USPQ 70.

16. With respect to Claim 24: Long discloses an outer cover (22), a body side liner (24) and an absorbent core (26) located there between.

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17. With respect to Claim 24: Long discloses the fasteners configured to releasably engage the outer cover (See figure 1).
18. With respect to Claim 25: see column 13, lines 21-27.
19. With respect to Claim 28 and 29: Long discloses fastener ears (64) (see figure 4) that are stretchable in the lateral direction (column 13, lines 21-27).
20. With respect to Claim 30: The examiner considers the hook and loop type fasteners to be a releasable bond.
21. Claims 9, 18 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Long et al. (5,624,429).
22. Long discloses the claimed invention except for the releasable bond of the second margin being three times greater in length than of the fastener edge. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have to length of the releasable bond being three times greater than the length of the fastener edge, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Allowable Subject Matter

23. Claims 13, 22 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Amendment

24. Applicant's arguments filed 10/30/02 have been fully considered but they are not persuasive.

25. With respect to Applicant's arguments that Long does not disclose the side panel define leg openings and waist openings: The applicant is arguing that due to the fact that Long discloses side edges 110 to form leg openings, then the side panels 60 cannot form leg openings. The examiner considers the leg opening to be the entire periphery of the leg opening, therefore if there was a gap in edge 110, then the opening would be defined by the side panel 90 attaching the back waist to the front waist, therefore the panel defines the leg opening. Furthermore, a leg opening cannot be formed when the article is in a flat, laid out condition. The article must be formed and the back and front being hooked together using the side panel, therefore the side panel would be used to form the waist opening and leg openings. If the applicant is arguing that the side panel has to form the entire periphery of the leg opening to be considered "defining" a leg opening, then it should be pointed out that the figures in the instant applicant does not show this either.

26. With respect to Applicant's argument that long does not disclose the fastener permanently attached to the back panels. Long discloses attachment zone 96, which are made of permanent bonds. Therefore the fasteners are permanently attached.

27. With respect to Applicant's arguments of whether determining the optimum length ratio's is routine experimentation and whether this is a result effective variable. The examiner has no longer used that rejection, does not call the ratio a "result effective variable" therefore the argument is not persuasive.

Conclusion

28. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (7:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw
January 2, 2003


WEILUN LO
SUPERVISORY PATENT EXAMINER
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